

**REPORT OF THE ACTIVITIES OF
THE DISCRIMINATION AND HARASSMENT COUNSEL
FOR THE LAW SOCIETY OF UPPER CANADA**

For the period from 1 July 2017 to 31 December 2017

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A. INTRODUCTION

1. The Discrimination and Harassment Counsel (DHC) provides a range of confidential services to individuals who have concerns or complaints about discrimination or harassment by lawyers or paralegals licensed in Ontario, or by students in the Ontario licensing process.
2. The DHC services are provided without charge to members of the public, as well as to licensees.
3. In order to fall within the mandate of the DHC Program, allegations of misconduct must be based on one or more of the prohibited grounds of discrimination listed in the Ontario *Human Rights Code* and the Law Society's codes of conduct for licensees. Personal harassment (e.g. intimidation and bullying) that is not based on any human rights grounds does not fall within the mandate of the DHC Program.
4. The complaints reported to the DHC arise in a variety of contexts, such as:
 - (a) clients who report that they have been subjected to discrimination or harassment by their own lawyer or paralegal;
 - (b) participants in litigation – whether they are clients, lawyers or paralegals – who have experienced discrimination or harassment by opposing counsel or opposing paralegals; and
 - (c) law firm employees, summer students, articling students, paralegals and lawyers who experiencing or have experienced sexual harassment, racial harassment, and/or workplace discrimination based on intersecting or distinct grounds of sex, race, ethnic origin, disability.
5. Former DHC Cynthia Petersen was appointed to the bench at the end of June 2017. Since July 2017, the DHC Program has been delivered by Discrimination and Harassment Counsel Fay Faraday and Alternate DHC Lai-King Hum and Natasha Persaud. As Alternate DHC, Ms Hum and Ms Persaud replace Ms.

Faraday when she is unavailable (due to illness, vacation, or scheduling conflicts); unable to act due to conflict of interest; or where, in an ongoing matter within the DHC's mandate, an individual opts to work with one of the Alternate DHC. Ms Hum assists individuals seeking service in French. To promote accessibility for those who contact the DHC office, the biographies of Ms Faraday, Ms Hum and Ms Persaud are posted on the DHC website.

6. During this reporting period, in addition to providing French language services as needed, Ms Hum delivered the DHC services during two weeks in September. Ms Persaud delivered the DHC services during two weeks in October. Alternate DHC continue to provide service on any ongoing matters that arose during their weeks of coverage.

B. SERVICES PROVIDED BY THE DHC

7. The DHC provides individuals who have experienced or witnessed discrimination or harassment by lawyers and/or paralegals with an opportunity to discuss their concerns confidentially with a knowledgeable and empathetic listener who understands discrimination and harassment issues and who is committed to promoting diversity and equity in the legal profession.
8. The DHC does not provide legal advice or legal representation. The DHC provides general information and support to complainants to assist them in identifying and evaluating their options to resolve their concerns. The nature of services provided is outlined below.

Coaching, Counselling and Self-Help

9. For some complainants, the ability to talk through their issues confidentially with an objective, knowledgeable outsider is all they want.
10. In some cases, strategic tips and/or coaching are provided by the DHC to complainants who want to handle a situation directly by themselves.

Information about Avenues of Recourse

11. Complainants who contact the DHC are informed about the avenues of recourse available to them, including (where applicable):
 - (d) speaking to their union representative (if they are unionized and the complaint relates to their employment);
 - (e) filing an internal complaint within their workplace (if the complaint relates to their employment);
 - (f) making a complaint to the respondent licensee's employer (e.g. the managing partner of the respondent's law firm or supervisor of a respondent who works in-house or in government);
 - (g) filing an application with the Human Rights Tribunal of Ontario or the Canadian Human Rights Commission;
 - (h) filing a formal complaint of professional misconduct with the Law Society;
 - (i) contacting the police (where criminal conduct is alleged);
 - (j) applying to the Criminal Injuries Compensation Board; and
 - (k) contacting a lawyer and/or Human Rights Legal Support Centre for legal advice regarding possible civil causes of action.

12. Complainants are provided with information about each of these options, including:
 - (a) what (if any) costs might be involved in pursuing an option;
 - (b) whether legal representation is required in order to pursue an option;
 - (c) referral to resources on how to obtain legal representation (actual referrals to lawyers or paralegals are not made by the DHC);

- (d) how to file a complaint or initiate an application (e.g. whether it can be done electronically, whether there are filing fees, whether particular forms are required, where to locate the requisite forms, etc.);
- (e) the processes involved in each option (e.g. investigation, conciliation, mediation, adjudication, etc.);
- (f) the general types of remedies that might be available in different fora (e.g. compensatory remedies in contrast to disciplinary penalties; reinstatement to employment versus monetary damages; public interest remedies); and
- (g) the existence of time limits for each avenue of redress (complainants are advised to seek legal advice with respect to specific limitation periods).

Complainants are advised that the options available to them are generally not mutually exclusive (though some exceptions apply).

Resolution Services

13. In addition to being advised about the above-noted options, where appropriate, complainants are offered resolution services (mediation or conciliation).
14. Whenever formal mediation is offered, the nature and purpose of mediation is explained, including that it is a confidential and voluntary process, that it does not involve any investigation or fact finding, and that the DHC acts as a neutral facilitator to attempt to assist the parties in negotiating the terms of a mutually satisfactory settlement of the issues raised in the complaint.
15. When a complainant opts for mediation, they are given the choice of contacting the respondent to propose the mediation or having the DHC contact the respondent to canvass their willingness to participate (prior written consent for the DHC to contact the respondent licensee must be provided). If both parties are willing to participate, they are required to sign a mediation agreement (setting out

the parameters of the mediation and ground rules) prior to entering into discussions facilitated by the DHC. The agreement clearly stipulates that the mediation process is confidential and subject to a mutual “without prejudice” undertaking by both parties.

16. Where informal conciliation services are offered, the complainant is advised that the DHC could contact the respondent confidentially and discuss the complainant’s concerns, with the goal of achieving a resolution to the complaint through shuttle diplomacy. Where such an intervention occurs, both the complainant and respondent are advised that the DHC is not acting as the complainant’s counsel, advocate or representative, but rather as an impartial go-between to facilitate constructive dialogue between the parties and try to resolve their issues. When a complainant requests such an intervention, written consent must be provided before the DHC contacts the respondent. Depending on the nature of the complaint and the parties involved, a conciliation agreement is sometimes executed to set out the ground-rules for the conciliation process.
17. Some complainants are not interested in the DHC’s resolution services because they are seeking an adjudicative process to create a formal record of the respondent’s misconduct or they desire a process that includes a fact-finding investigation. Sometimes they decline an offer of resolution services based on a belief that the respondent would not participate in good faith. When a complainant elects to attempt mediation or conciliation, respondent licensees are generally receptive to the DHC’s offer of resolution services. On occasion, however, respondents decline to participate.
18. During this reporting period four mediation/conciliation processes have been pursued.

Referrals

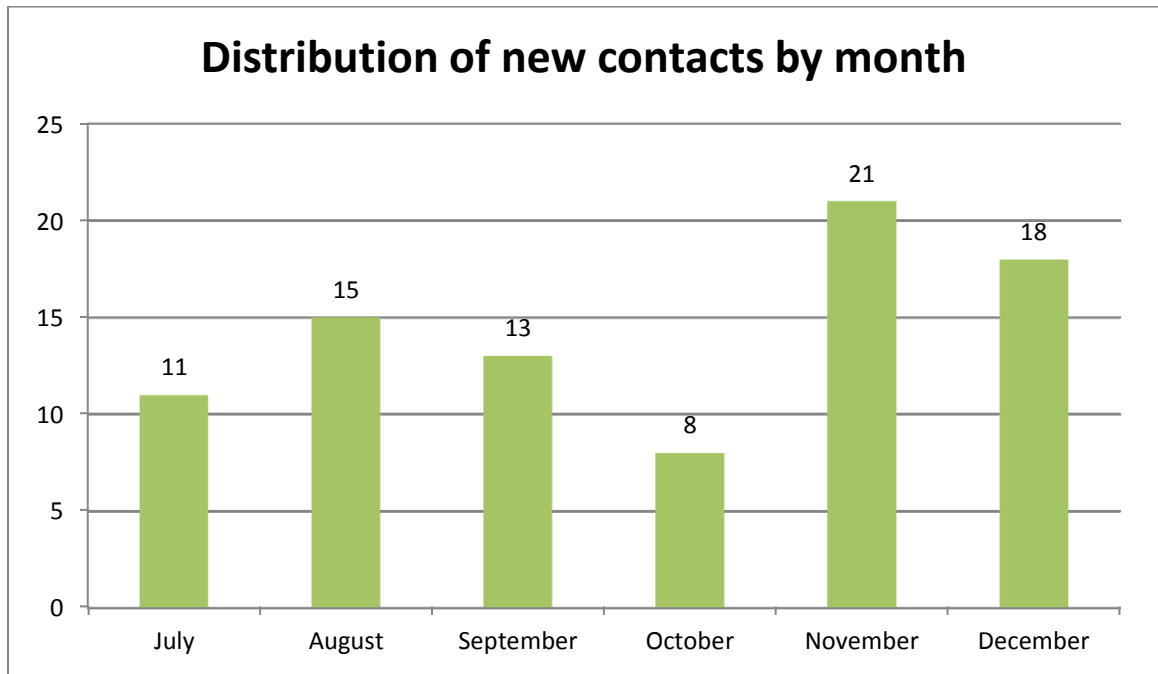
19. The DHC refers some complainants to other agencies or organizations (such as the Member Assistance Program, a sexual assault crisis centre, a suicide

prevention helpline, the Barbra Schlifer Commemorative Clinic, ARCH Disability Law Centre, or the Human Rights Legal Support Centre). The DHC also directs complainants to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other organizations.

- 20. The DHC does not operate a lawyer referral service.

C. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

- 21. During this reporting period, 86 individuals contacted the DHC Program with a new matter.¹ This represents an average of 14 new contacts per month.
- 22. The volume of new contacts with the Program was distributed monthly as shown in the following chart:



- 23. During this reporting period, two individuals were provided services in French.

¹ Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to the same ongoing matter are not counted in this number. Individuals who had multiple communications with the DHC about the same matter are only counted once.

Neither of them made a specific complaint about the conduct of a licensee.

D. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

24. Of the 86 new contacts with the Program, 30 contacts raised substantive concerns about discrimination and/or harassment by licensees that fall within the mandate of the DHC program. One complaint concerned the conduct of a paralegal. The remaining 29 complaints were about lawyers' conduct.
25. Of the 29 complaints about lawyers, 13 were made by members of the public and 16 were made by members of the legal profession.

Complaints about Lawyers by Members of the Legal Profession

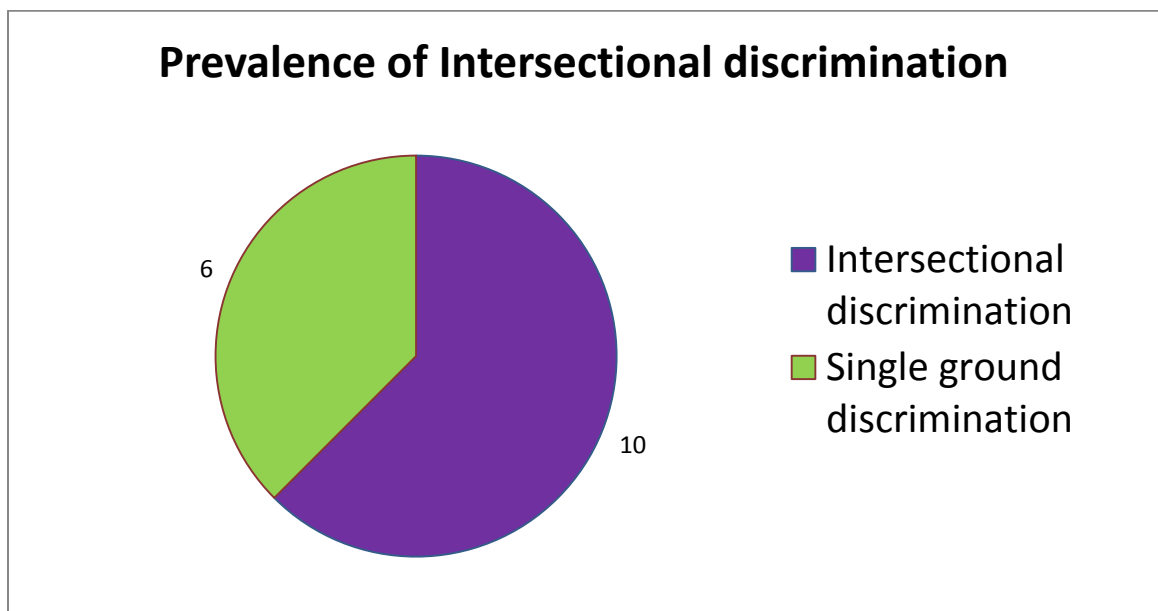
26. The 16 complaints about lawyers that were made by members of the legal profession were made by individuals with a variety of careers/career stages within the profession:
- 8 complaints by lawyers;
 - 4 complaints by summer students/articling students;
 - 3 complaints by paralegals; and
 - 1 complaint by other law firm employees.
27. Of the 16 complaints against lawyers made by members of the legal profession
- 12 (75%) were made by women, nearly half of whom (5) voluntarily self-identified as racialized women and/or women with disabilities;
 - 4 (25%) were made by men, all of whom voluntarily identified as racialized men.
28. Of the 4 complaints against lawyers made by summer students and articling students, 75% (3) were made by women; 25% (1) were made by men. Of the student complainants, 50% voluntarily self-identified as racialized.

29. Of the 16 complaints from members of the legal profession, 11 (69%) related to the complainants' employment, including all 4 of the complaints from students. Two (2) complaints from within the legal profession involved harassment or discrimination by opposing counsel. Three (3) complaints related to interactions with other lawyers in other professional contexts.

30. Of the 16 complaints from members of the legal profession:

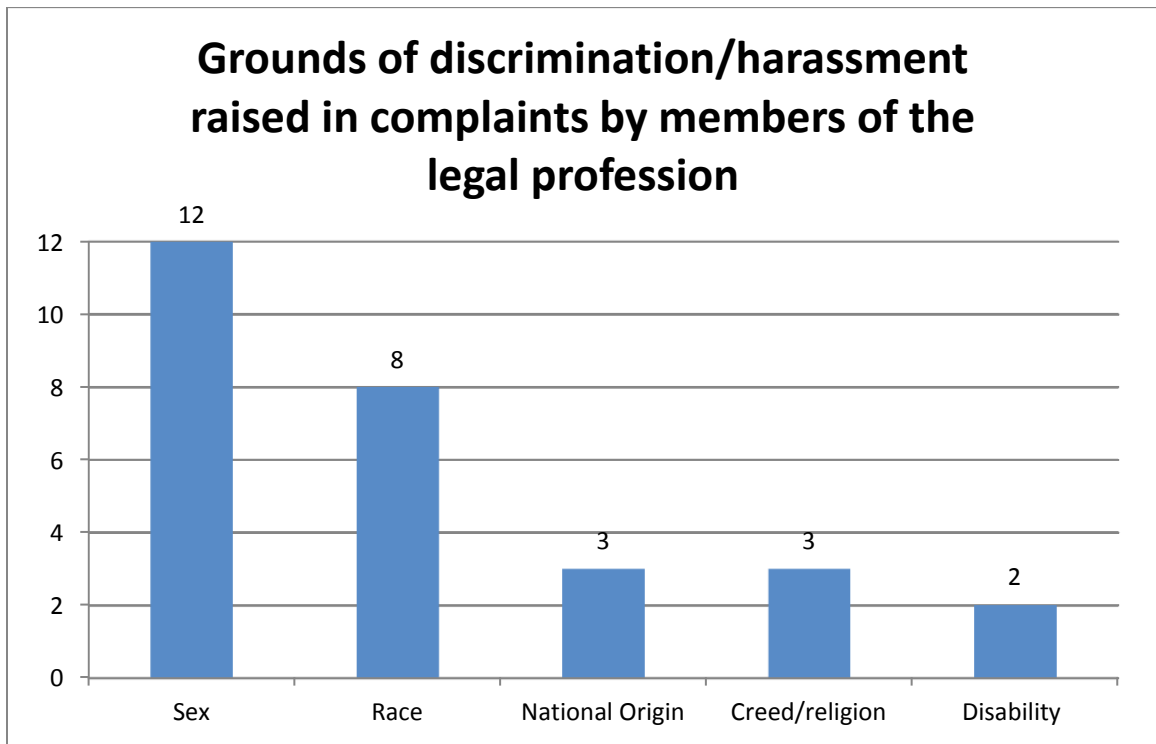
10 (62.5%) raised allegations of harassment and discrimination on intersecting grounds including combinations of sex, race, national origin, disability and religion. All of the complaints made by men (4) raised intersecting dynamics of discrimination and harassment based on race, religion and/or national origin.

6 raised only a single ground of discrimination. All of these single-ground complaints were made by women regarding sexual harassment (5) and discrimination based on sex/pregnancy (1).



31. In summary, the following prohibited grounds of discrimination were raised with the following frequency in complaints by lawyers and articling students about the conduct of other lawyers. The total exceeds 16 as most complaints raised more than one ground of discrimination

Sex	12 (including sexual harassment)
Race	8
National Origin	3
Creed/Religion	3
Disability	2



32. The complaints with respect to employment typically involved a power (seniority) differential between the complainant and the lawyer complained about, although some complaints concerned peer-level harassment. The range of behaviour that was complained about in the context of employment included:

- (a) Sexual harassment, including verbal harassment; sexually explicit harassment and comments about female co-workers bodies; repeated

sexual advances/pressuring complainant(s) for sexual relationships; disparaging women in front of colleagues; physical sexual harassment; calling complainant(s) late at night; and law firm social activities at which women were sexualized;

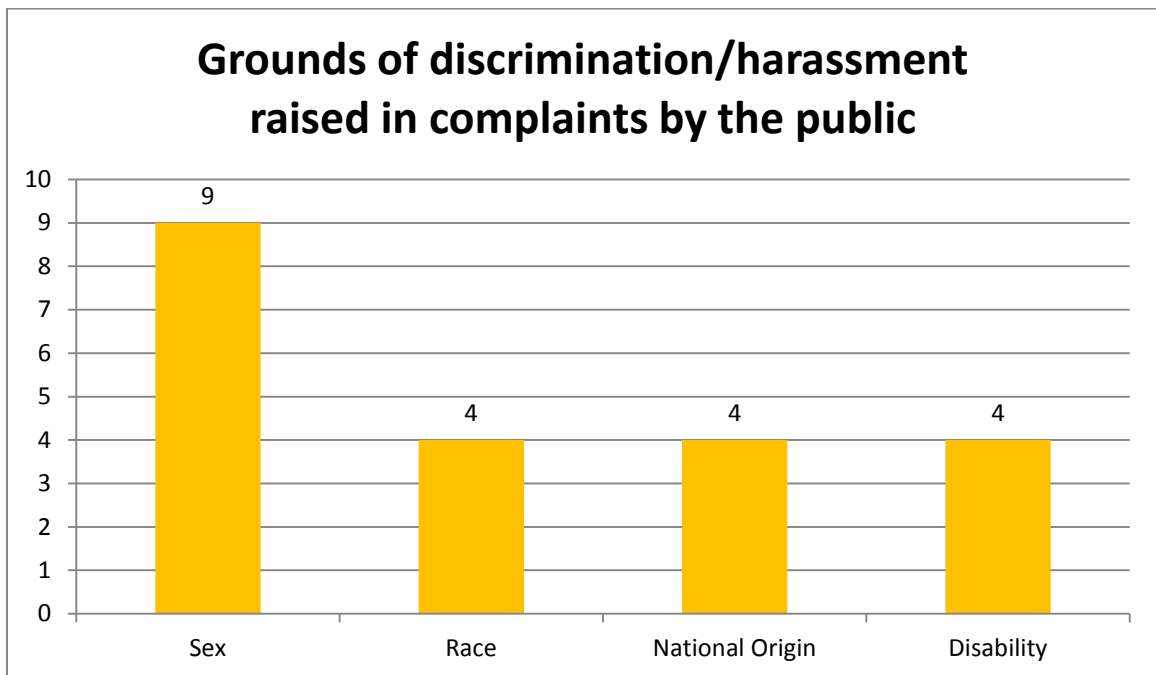
- (b) Racial harassment, including verbal harassment, verbal and physical threats, behaviour that isolated or humiliated the complainant(s) in front of their peers;
 - (c) Harassment with respect to religion, including verbal harassment and refusal to accommodate;
 - (d) Harassment with respect to disability, including verbal harassment, verbal abuse, and refusal to accommodate; and
 - (e) Verbal harassment with respect to country of origin, including disparaging complainant(s)' training received outside of Canada.
33. The range of behaviour identified with respect to the conduct of opposing counsel primarily involved verbal and/or written harassment on *Code* grounds.
34. The range of behaviour identified in complaints about lawyers in other professional settings included sexual and/or racial harassment, harassing phone calls, and verbal and/or physical threats.

Complaints about Lawyers by Members of the Public

35. During this reporting period, 13 complaints were made about lawyers by members of the public. Again, the majority of complaints involved allegations of intersectional discrimination. Ten (10) complaints were made by women who voluntarily self-identified based on intersecting grounds of sex, race, national origin, disability, Indigeneity, disability and/or age (youth or elderly). All three (3) complaints made by men were made by men with disabilities.

36. Of the 13 complaints by members of the public, seven (7) were made by clients who reported discrimination or harassment by their own lawyer or by a lawyer who they were seeking to retain. The remaining six (6) complaints were made by litigants about the conduct of opposing counsel.
37. The grounds of discrimination and harassment raised by the public were sex, race, national origin and disability. The grounds exceed 13 because complaints raised intersecting grounds of discrimination and harassment:

Sex	9 (including sexual harassment and sexual assault)
Race	4
National Origin	4
Disability	4



38. The behaviour identified in complaints relating to behaviour by opposing counsel included:
- (a) Sexual and/or racial harassment, including abusive language, intimidation, and sexist or racist communication, verbally or in written documents,

including documents filed in court; and

- (b) Harassment and intimidation based on disability, including being mocked due to a disability, refusal to accommodate communication needs, and refusal to adjourn to accommodate a disability.
39. The behaviour identified in complaints relating to the complainant's own lawyer included:
- (a) Sexual assault;
 - (b) Demanding sex in exchange for legal services and/or as a precondition to providing legal services;
 - (c) Sexual harassment;
 - (d) Failure to accommodate a client's disabilities, particularly with respect to modes and/or pace of communications that accommodate sensory, physical or cognitive disabilities;
 - (e) Refusal to seek adjournment of proceedings in order to accommodate client(s)' disability; and
 - (f) Lawyer's withdrawal from representation or refusal to represent because client has a disability.

Complaints about Paralegals

40. During this reporting period, a woman made a complaint with respect to sexual and racial harassment and intimidating behaviour by a male paralegal in a professional context that was neither an employment relationship nor litigation.

E. MATTERS OUTSIDE THE DHC MANDATE

41. During this reporting period, the DHC received 55 calls and/or emails relating to

matters outside the Program's mandate. The "outside mandate" calls typically are dealt with quickly and typically do not involve follow up by the individual complainant.

42. The majority of these new contacts were inquiring about discriminatory and/or harassing behaviour by individuals who are not licensees and so are beyond the Law Society's and DHC's mandate, including employers, landlords, police, community agencies, educational institutions, medical practitioners and politicians.
43. The second largest category of new contacts outside the DHC mandate involved complaints about the conduct of Ontario lawyers and paralegals that did not involve discrimination or harassment on *Human Rights Code* grounds. These included allegations with respect to:
 - (a) abusive employment relationships at law firms that involved bullying and harassment on grounds other than *Human Rights Code* grounds;
 - (b) unpaid articling positions;
 - (c) billing disputes;
 - (d) conflicts of interest;
 - (e) incivility; and
 - (f) concerns about sharp practice or other breaches of the *Rules of Professional Conduct* or *Paralegal Rules of Conduct*.
44. There were a few complaints about the conduct of lawyers licensed in other provinces. The complainants in those matters were referred to the law society in the appropriate province where the licensee is licensed.
45. An explanation of the DHC's mandate, role and duties was provided to each person who contacted the DHC with a matter outside the Program's mandate. All

new contacts raising matters outside the DHC mandate were referred to other agencies for assistance.

F. PROMOTIONAL AND EDUCATIONAL ACTIVITIES

46. During this reporting period, DHC Fay Faraday delivered training sessions to incoming first year law students at Queen's University during orientation. The training sessions, delivered in conjunction with the Four Directions Aboriginal Students' Centre, addressed discrimination and harassment issues, professional obligations with respect to discrimination and harassment, the services of the DHC and the resources for support on campus.
47. Alternate DHCs Lai-King Hum and Natasha Persaud participated in a Women's Law Association of Ontario continuing professional development evening on "Paths to Career Satisfaction".
48. Fay Faraday provided a training to Law Society staff on micro-aggressions and mental health in connection with the Law Society's recognition of the International Day of Persons with Disabilities.
49. Throughout this reporting period, periodic advertisements were placed (in English and French) in the *Ontario Reports* to promote the DHC Program within the legal profession. The LSUC continues to maintain a bilingual website for the DHC Program.